

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

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DIVISION II
2019 FEB 12 AM 9:16
STATE OF WASHINGTON
BY AL
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STATE OF WASHINGTON)
)
Respondent,)
)
v.)
)
Donald Kingsler)
(your name))
)
Appellant.)

No. 51748-5-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, Donald Kingsler, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

P/M: 2/8/19

Two-step interrogation made by state agent to circumvent
miranda warnings and coerced confession

Additional Ground 2

If there are additional grounds, a brief summary is attached to this statement.

Date: 2-7-19

Signature: Donald Kingsler

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Coercion rendered the confession unreliable and thus inadmissible. The statement was involuntary because Mr. Free will was overborne by Police Pressure. Mr. Freedom of movement was curtailed. MR. Parker was acting as a government agent, an informant becomes a government agent only when the informant has been instructed by the Police to get information about the particular defendant. If the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel. 1. Did the Police Department have an official policy directing officers to use a two-step interrogation? 2. Whether coercive or improper Police tactics were used? 3. Change in setting? 4. Lapse in time, 5. overlap in content between questioning. The interrogation by MR. Parker is a premeditated attempt to evade Miranda warning. The Supreme Court defined "interrogation," stating it includes either "express questioning or its functional equivalent," since the state is responsible for establishing the isolated circumstances under which the interrogation takes place and has the only means of ~~making~~^{making} available corroborated evidence of what is given during incommunicado interrogation, the burden is rightly on its shoulders. The two-step process is question first and Miranda after confession. "An interrogation in familiar surroundings such as ones home softens the hard aspects of Police interrogation and moderates a suspects sense of being held in custody." Officer JEFF O'Dona testified on page 277 that "I walked him to the unmarked vehicle and I searched him incident to arrest, sat him in the back of the vehicle and I read him his Miranda rights." "At the Police station I escorted MR. Kingslet to an interview room and I placed him in an interview room on a chair and left the interview room to a second room where MR. Kingslet was on a video monitor where he was ~~being~~^{being} viewed. Both a amendment was violated when incriminating evidence is obtained by circumventing accused rights to have counsel present in meeting between state agent and accused. Our legal regime requires that defendant be advised of their right to remain silent and the right to an attorney, the failure to advise renders

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Interrogation is admissible. the ultimate test regarding the admissibility of confession, is the test of voluntariness. IS it the product of an essentially free and unconstrained choice by its maker? If not, will has been overborne and capacity for self-determination critically impaired. confession of facts due process. line of distinction is that at which governing self direction is lost and compulsion, of whatever nature or however increased, prompts or helps to prompt the confession. Miranda warnings were designed to protect a defendant's right not to make incriminating statements while in police custody, and miranda warnings are required when an interrogation or interview is (a) custodial (b) interrogation (c) by a state agent. Eric Smith testified that MR. Parker was to initiate contact and to speak with the defendant at the Parker home on page 230 and with the help of opnet placed recording devices on MR. Parker. (page 231) Detective Grawl and Eric Smith had parked outside MR. Parker's residence (page 233) Detectives from opnet had seen me on the balcony of MR. Parker's 2 story home. (page 234) on page 242 MR. Parker states "last thursday when Ken started the night" "Eliana said Ken went in her room" "she said Ken actually did something" "and I believe her" "I don't want to do the cops or anything like that" MR. Parker then alleged that I "messed with her" MR. Parker then stated on page 246 "Ken came in, she was at the edge of the bed, then Ken started rubbing her" MR. Parker then said "Ken wouldn't put her hands anywhere near that general vicinity to check on somebody" "I haven't gone to anybody about this" "Ken know how angry I get about stuff like this" "I am dead set, I believe her" "we seriously cannot talk, ever again" "I don't want to go to the cops because look where it gets Ken, Ken've already been in trouble" "What Ken's saying is we're no longer friends and it's just the way it is essentially and should I throw it all away" on page 249 MR. Parker then says "I can just call the cops and then just go and report this and then, what, Ken's going to have ~~the~~ big ole thing coming down on Ken. I don't want to have to do that." "tell me the truth" "Ken can't change my mind" MR. Parker then said "seriously going to deny the whole comment" "all this does is make me angry, that's all it does" "I want Ken to tell me

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you did do it," "If you walk out this door in denial, we will never speak again and I will go to the police." MR. Parker went out the front door and had been in front of the staircase preventing me from leaving. There is wind chimes on the balcony that makes it hard to hear. Again MR. Parker states, "You walk out that door, I will call the cops." "I'm going to walk out that front door, don't follow me for a minute." I was in custody from the moment I stepped on MR. Parker's property. "Custodial" refers to whether the defendant's movement was restricted at the time of questioning. An objective test is used to determine whether a defendant was in custody. Whether a reasonable person in the individual's position would believe he or she was in police custody to a degree associated with formal arrest. The practice of intentionally withholding Miranda warnings during an initial phase of questioning, with the object of obtaining a confession, and then giving the warnings before continuing questioning violates a defendant's 5th amendment rights, and any admission obtained before or after the warnings are inadmissible. Where police tactics and trickery that was neither tactical nor product of essentially free and unconstrained choice, defendant's statements were involuntary, and inadmissible for any purpose. Appellate court review de novo a trial court's decision as to whether a defendant was in custody during police questioning. Important human values are sacrificed where an agency of the government, in the course of seeking a conviction, wrings a confession out of an accused against his will. Certain interrogation techniques, either in isolation or applied to the unique characteristics of a particular suspect, are so offensive to a civilized system of justice that they must be condemned. The police must obey the law while enforcing the law, that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves. Miranda rights are required when 2 elements are present 1. When the suspect is in custody and 2. When the suspect is interrogated by law enforcement. Where a coerced confession constitutes a part of the evidence before the jury and a general verdict is returned, no one can say

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What credit and weight the jury gave to the confession. Colorado v. Connelly
479 U.S. 157, 107 S. Ct. 515, 93 L. Ed. 2d 473 (1986) United States v. Carey,
627 F.3d 470, 478 (2d Cir. 2010) United States v. Williams, 435 F.3d 1148
(9th Cir. Cal. 2006) United States v. Stewart, 536 F.3d ~~714~~⁷¹⁸ (7th Cir. 2008)
United States v. Alvarez-Sanchez, 478 F.3d 663, 669 (5th Cir. 2007) Rhode Island
v. Innis 446 U.S. 291, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980) United States v.
Henry, 447 U.S. 264, 100 S. Ct. 2183, 65 L. Ed. 2d 115 (1980) Maine v. Moulton,
474 U.S. 159, 176-77, 106 S. Ct. 477, 88 L. Ed. 2d 481 (1985) Massiah v. United
States, 377 U.S. 201, 206, 84 S. Ct. 1199, 12 L. Ed. 2d 246 (1964) Ake v. Hudson,
623 F.3d 301, 310 (6th Cir. Ohio 2010) United States v. Czychak^{Rak}, 378 F.3d 822, 826
(8th Cir. 2004) People v. Hancock, 2 Cal. 3d 150, 141 Cal. Rptr. 698, 570 P.2d 1050 (1977)
State v. Lorenz 152 Wn. 2d, 93 P.3d 133, 2004 Wash. Lexis 450 State v. Thompson, 73
Wn. App. 122, 131, 867 P.2d 691 (1994) State v. Unga, 165 Wn. 2d 95, 196, P.3d
645 (2008) State v. France, 121 Wn. App. 394, 88 P.3d 1003, 2004 Wash. App. Lexis
775 modified 129 Wn. App. 907, 120 P.3d 654, 2005 Wash. App. Lexis 2590
Missouri v. Seibert, 542 U.S. 600, 1245 S. Ct. 2601, 2609-2611, 159 L. Ed.
2d 643 (2004) Henry v. Kibnan, 197 F.3d 1021, 1026-1029 (9th Cir. 1999) Dickerson v.
United States, 530 U.S. 428, 120 S. Ct. 2326, 141 L. Ed. 2d 405 (2000) Reyes v.
Lewis, 833 F.3d 1001 (9th Cir. 2016) Morse v. Nev. AG, 2017 U.S. App. Lexis
7019 (9th Cir. 2017) ~~Clombe~~ Clombe v. Connecticut, 367 U.S. 568, 581-82 (1961)
Blackburn v. Alabama, 361 U.S. 199, 206-07, 80 S. Ct. 274 4 L. Ed. 2d 242
(1960) Jackson v. Dennis, 378 U.S. 368, 376, 84 S. Ct. 1774, 12 L. Ed. 2d 208, 28
Ohio R.P. 2d 177 (1964) Miller v. Fenton, 474 U.S. 104, 106 S. Ct. 445 88 L. Ed.
2d 405 (1985) United States v. Bassignani, 575 F.3d 879, 883 (9th Cir. 2009)
United States v. Kim, 292 F.3d 969, 973 (9th Cir. 2002) United States v. Straighthead, 539 F.3d
1073, 1082 (9th Cir. 2008) United States v. Booth, 669 F.2d 1231, 1235 (9th Cir. 1981) United
States v. Harbohn 260 F.3d 1062, 1067 (9th Cir. 2001) United States v. Brubst, 558 F.3d 982, 996
(9th Cir. 2009) Mallory v. Hogan, 378 U.S. 1, 7 (1964) United States v. Thigle, 658 F.2d 1332, 1335
(9th Cir. 1981) Dardt v. Schito, 548 F.3d 847, 865 (9th Cir. 2008)